

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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SAMUEL S. UPTHEGROVE,

Petitioner,

v.

PCS A.J. and PCT LEAH,

Respondents.

ORDER

09-cv-211-slc

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Petitioner Samuel Upthegrove, a prisoner at the Waupun Correctional Institution in Waupun, Wisconsin, has submitted a proposed complaint. In a letter accompanying his complaint, petitioner says that he is “indigent and ha[s] no ability to pay the filing fee.” Therefore, I construe petitioner’s complaint to include a request for leave to proceed *in forma pauperis*. Petitioner has not submitted a copy of his trust fund account statement for the six-month period immediately preceding the filing of the complaint as required by 28 U.S.C. § 1915(a)(2). However, in another lawsuit in this court, *Upthegrove v. Holm*, 09-cv-206-bbc, petitioner submitted a trust fund account statement covering approximately this six-month period. From the statement, it appears that petitioner presently has no means with which to pay an initial partial payment of the \$350 filing fee. However, petitioner should be aware that he is obligated to pay the \$350 filing fee, even if this court determines that he will not be permitted to proceed with his complaint *in forma pauperis* and even if he does not presently have funds with which to pay the fee. 28 U.S.C. § 1915(b)(1). His account will be monitored and the fee must be taken in monthly installments when the funds exist.

Accordingly, IT IS ORDERED that petitioner Samuel Upthegrove’s complaint is taken under advisement. As soon as the court’s calendar permits, petitioner’s complaint will be screened pursuant to 28 U.S.C. § 1915(e)(2) to determine whether the case must be dismissed

either because the complaint is frivolous or malicious, fails to state a claim on which relief may be granted or seeks monetary relief against a defendant who is immune from such relief. Petitioner will be notified promptly when such a decision has been made.

Further, the Clerk of Court is requested to insure that the court's financial records reflect that petitioner owes the \$350 fee for filing this case, in accordance with the requirements of the Prison Litigation Reform Act.

Entered this 14<sup>th</sup> day of April, 2009.

BY THE COURT:

/s/

STEPHEN L. CROCKER  
Magistrate Judge